THE LOS ANGELES BAR ASSOCIATION

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PROBATE LAW AND PROCEDURE COMMITTEE'S REPORT

MR. STEADMAN G. SMITH, chairman of the Probate Law and Procedure Committee, in submitting his report to the Board of Trustees, says:

What is the proper method of determining legal fees in cases where an estate is set aside by the court to a widow or minor children under Probate Code sections 640, *et seq.*? First, as to the customary methods of procedure, it appears that most attorneys make a practice of charging a nominal fee of $50.00 to $75.00 for securing such an order. So far as the Committee has been able to ascertain, there is nothing which would *legally* prevent an attorney from charging a fee based on the statutory provisions for administration of decedent's estates, except that this method of fixing the fee would undoubtedly prove unjust to the widow or minor children for the reason that less time, effort and expense of the attorney are involved in setting aside an estate less than $2500 in value than in probating the complete estate as provided for in the Probate Code.

In this connection, it will be observed that all sections having to do with setting aside estates under $2500, and Section 910 having to do with commissions allowed attorneys for their fees, are found under the same division of the Probate Code entitled, "Administration of Estates of Decedents." On the other hand, one committee member has expressed the opinion that an attorney, under ordinary circumstances, would not be permitted to charge statutory fees in the instant case.

The Commissioners of Los Angeles County in the Probate Departments report that they have had no occasion to consider the fee for services rendered in setting aside estates under $2500. They share the view with other members of the Committee that the fee to be charged is a matter of contract between the attorney and client, which should be set at a reasonable expense for drawing the necessary papers and making court appearances.

In view of the fact that Section 645 of the Probate Code requires payment of expenses of last illness, funeral charges and expenses of administration to be paid prior to entry of decree, it frequently happens that the first two of these items absorb all the available funds, leaving no cash for payment of administration expenses. Under this state of affairs, attorneys have frequently accepted notes for payment of their fee as also outlined in Mr. Faucett's letter. It has been suggested by a member of the Committee that this procedure would undoubtedly be ethical, as one could read into the provisions of Section 645 of the Probate Code immediately after the words "expenses of administration have been paid," the following: "or other arrangements for payment thereof made." In view of the fact that the section does not contain this wording, the Committee is of the opinion that the procedure of accepting a note for payment of such services so rendered would be ethical and proper if the following two requirements are met:

1. That the note so given be regarded by both attorney and client as full payment of the services so rendered, thereby giving the attorney a cause of action on the note only, which is accepted by the attorney in lieu of payment for services rendered.

2. That the arrangement of accepting the note of the client in payment of the fee for services rendered be fully explained to the commissioner or judge setting at the time hearing is had on the petition to set aside the whole estate to the widow or minor children.

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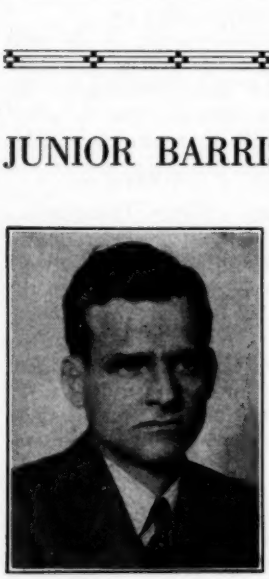
JUNIOR BARRISTERS' 1938 OFFICERS



W. JOSEPH MC FARLAND

W. JOSEPH McFARLAND has been elected 1938 president of the Junior Barristers of the Los Angeles Bar Association.

Responding to an address in which he was commended for his long and earnest service to the Junior Barristers, Mr. McFarland said: "Today, more than at any time in the past decade, the bar is looking to the younger lawyer to put his mind to the task of evolving a solution of the problems that now beset this country. The youth of the bar no less than the youth in industry is equipped to cope with the realities that confront us, with clarity of thought and soundness of judgment. Today we propose to do our duty—to develop and sponsor sound leadership."

Mr. McFarland is the Chief Complaint Deputy in the office of City Attorney General under U. S. Webb.

Ford W. Harris, Jr., was elected First Vice Chairman; Richard R. Van Hagen, Second Vice Chairman, and George B. Gose, Secretary-Treasurer. The Board of Trustees confirmed the election of the above officers of the Barristers.

THE "VAG-ROAMER" A SOCIAL AND JUDICIAL PROBLEM

By James H. Pope, Judge of the Municipal Court

Recent articles appearing in *The Bulletin* pertaining to vagrancy and the right of an unfortunate person to relief, are of peculiar interest to the Municipal Court, as Division 30, which holds its session in Lincoln Heights Jail, is, to a large extent given over to the administration of justice in vagrancy cases.

Considering the rights of American citizens to go freely from place to place throughout the entire nation, and the relationship of the separate states to each other, it would appear that this right is unrestricted; that any person may go to any place he pleases, and there seek to follow his inclinations in the way of living.

It is only under extraordinary circumstances that interpretation of the law is found to be necessary in a way other than as indicated by a simple formula. A survey of some of the material facts that confront communities most frequently visited by citizens who do not wish to stay in the places of domicile, but take to the road and visit other places, indicate the interpretation that judges who meet this class of persons are called upon to make.

I believe that it is necessary, in order to observe the rights of all people, to limit this freedom of travel by saying that they have a right to go from place to place lawfully. This word "lawfully" then becomes an important matter of interpretation.

A community expects and requires certain things of its citizens, particularly that they shall practice the ordinary and common virtues, among which are honesty, diligence, industry, and prudence. A community whose citizens follow these ordinary virtues finds itself growing larger and larger, and the citizen who practices these virtues does two things: First, he earns compensation, paid to him according to the terms of his contract and second, he builds up in the community valuable properties, upon which the community imposes taxes throughout the entire lifetime of the improvement.

Speaking in very broad terms, I believe that the entire value of an average building, is paid out in taxes before it is torn down to make way for new improvements. So that the ordinary workman has not only earned compensation for himself, but has earned a like amount for his community.

RIGHT TO RELIEF

It seems to me then that the citizen has a perfect right to say to his community, "I will work diligently to provide for myself and my dependents. I have done honestly and faithfully by the community, and I have placed in the hands of the community large funds from which the community can now return to me, if I am unfortunate and in need, the necessaries of life."

If we say that such a relationship is not true, then the value of communities immediately resolves, because communities are the creations of individuals for a greater benefit than the individuals, separated and scattered, could by themselves, create.

We know that in the ordinary experience of life, people do go from place to place, and that many persons live in several places in the course of a lifetime.

Assuming there is an even exchange between the states of their citizens, there is no difference in the balance, for the state, some of whose citizens go to another state, is not relieved of its obligations, in case of misfortune, because persons from the other state have come to it, there is merely an exchange of citizens. In each of these cases, honest people have simply exchanged places of abode, and in doing so have exchanged their rights with respect to their individual states, and the states have the funds, stored up through taxation for the performance of their obligations towards their individuals. In practice, however, we know that many states lose citizens without gaining any in return; while other states keep their natural citizens and have new citizens added to them.

Under ordinary circumstances the state which gains honest citizens profits by it, and the state which loses honest citizens loses by it. But in circumstances of stress, when states to which persons go are unable to assimilate them and place them where honest people can do honest work, the state to which the people have gone begins to suffer, and the direct consequence is that the funds, which have theoretically been accumulated for the benefit of the persons who have earned them, are no longer returned to persons who have earned them and are entitled to use them in misfortune, but are given over to other persons who have come in and who have done nothing for the community, but are ready to receive. So, in a way, it seems to me that we are not dealing fairly with our own who have done their part.

GOVERNMENT AID

A proper and fair adjustment might seem to require the states of origin to make contribution to the funds of the state which has to make the expenditures. This has never been attempted, and there are probably so many obstacles in the way of successful negotiations that the suggestion does not get beyond the mere expression of it. In place of doing so, we have resorted, under the theory that the entire nation has an obligation, to the national treasury and asking contributions for the excessive load. So long as the contribution continues, the immediate money effect will probably not develop, although it does perhaps introduce new difficulties in the way of the entrance of the national government into state affairs, which, if the writer understands correctly the theory of constitutional government, is something to be undertaken only when it is clearly defined as a national transaction.

So much for the law-abiding and honest.

At the present time California is witnessing a tremendous migration of the law-abiding and honest, but unfortunate. The problem of the law-abiding and honest, but unfortunate, is small compared with the problem of those of questionable character, who invade California every year with the beginning of cold weather in the East. With the law-abiding and unfortunate, it is largely a problem placement. Placement is a matter that can probably be solved with proper study.

As to the other class, persons we meet largely at Lincoln Heights, we find that an interpretation of the right of freedom of travel is somewhat limited, and we have made bold to say that a person travels lawfully only when he seeks citizenship in the state of his destination, and comes under such circumstances as to reasonably assure us that he will be able to live without resort to public relief.

This statement, I realize, will arouse much discussion. Yet I say that it has only been expressed after considerable thought and much experience.

Every community maintains public hospitals which are supported by public taxation, which in turn is received from owners of properties that have been

made useful through the efforts of honest people. Most communities maintain hotels where unfortunates may secure food and shelter, and institutions known as missions where homeless, discouraged, and unfortunate men may go for the inspiration of music, lectures, food, shelter, and in many cases religious exhortation. These institutions are supported by the voluntary contributions of public-spirited people.

In both cases, the hospitals and the missions are for persons residing here, and such additional number of persons as might be reasonably expected in the ordinary course, to be traveling and have become unexpectedly stranded here, and to have need of the ministrations of these institutions. In fact, in everything that I say, I do not have in mind the person with honest intentions, who reasonably expects to follow the course of an honest citizen, but who has been unexpectedly overcome by misfortune.

INFLUX OF NEEDY

Each year we have literally pouring into the community thousands of persons of all character and description, great numbers of whom have given no thought whatever to a means of livelihood except as opportunity presents itself, and this thing called opportunity is of several kinds. The first concerned is the opportunity of crime, whether it be robberies, burglaries, thefts, or offenses like begging, mooching, or another occupation which is quite common that of submitting to depraved kinds of vice for fee, which unfortunately in large cities has a market. Another is the kitchen worker, who is not seeking to advance in culinary science at all, but simply wants temporary work in some kitchen where he can secure food. The latter individual is of much concern from a health standpoint, as actual observation discloses that many carry with them diseases, of which the most common are venereal, tuberculosis, and infections growing out of lack of physical cleanliness.

The first effect of the invasion in the fall is the overcrowding of the institutions which serve for the relief of the homeless and unfortunate. Next begins the rush of crime, and shortly thereafter, or possibly concurrent therewith, the influx of the kitchen workers.

There should be added to the foregoing factors one more, which is of sufficiently common occurrence to attract attention, and that is the unfortunate person who is denied assistance in his own community, and with whom the thought arises or, as frequently occurs, the suggestion is made, to come to Los Angeles and be treated by the county, free. These persons, suffering usually from tuberculosis but oftentimes from arthritis, and frequently lameness and other similar incapacities, come in considerable numbers to be treated in our hospitals.

SUPERVISION

If we assume the broadest interpretation of the law, giving the greatest of liberty to the individual, we still have the physical incapacity to meet the demand. It becomes necessary to have closer supervision of our visitors. Members of the police department constantly patrol the districts of the city, particularly Main street and the cross streets between First and Eighth, and there stop and question persons who have the general appearance of being loiterers.

Officers also visit the public parks where another class of visitor congregates, while at the same time, the personnel in the radio cars are ready and alert to answer a call to any community where attention is needed, and which is frequently occasioned by the appearance of visitors in residential districts, where they seek

by house visitation to acquire their needs, and in so doing alarm women and children and cause fear in the minds of other persons.

The result of questioning by officers is to segregate those who have definite affairs to attend to, and to conduct to Lincoln Heights those who are here without any means whatever of supplying the necessaries of life, and who have come in by hitch hiking or stealing rides on trains. It is the latter class of persons who are frequently classed as "vag-roamer"

COURT PROCEEDINGS

These persons are arraigned in the Municipal Court, Division 30, usually between seven and eight in the morning, at which time the charge is read to them and their pleas are taken. As to those who plead not guilty, arrangements are made to give trial by either court or jury within one week's time, and to supply them with the services of the public defender. As to those who plead guilty, a statement is made from the bench as to the reasons for the arrest, the reports of the arresting officers are read, and each individual is given an opportunity to make any statement he wishes. He is then told as to all 21 years of age or under who are here without any means of obtaining the necessaries of life, that the United States Government has a transient camp to which he may go free of charge, and there be given work that will enable him to provide the necessaries of life, including food, clothing, shelter, and medical attention, and to save enough money from earnings to pay the cost of transportation back home. Also, efforts are made to discover the identity of those who come in the manner described, but who honestly seek employment and are capable of doing work, to have them visit employment agencies or places where persons are employed, to ascertain directly for themselves whether any employment is available.

It is explained to each one that the facilities of this community are not sufficient to provide for them, and it is suggested that they return to their own communities.

It is called to their attention that we will give hospital facilities to any person suffering from diseases, particularly venereal diseases and tuberculosis, so that they may be either cured or the progress of the disease be stayed, until they can get back to their own homes.

Finally, the Court informs them briefly as to what would be acceptable and desired from them, and particularly that they cease going from community to community, but try to stay in some one place and become a part of that community. Each individual is given a paper which states upon its face, and they are told verbally, that if they follow the Court's advice, suggestion, and instruction, upon returning the paper to the Court by mail, the case against them will be dismissed.

TROUBLESOME CLASSES

The writer does not know any more humane treatment that could be given a very troublesome social problem than is given in Los Angeles. The problems that confront the Court are very great, and not easily solved.

Among those brought into the Municipal Court are many cases of disease, and a large number with criminal records. An illustration of the latter can be given in a few simple classifications. The first is the young man who started early in a life in crime, who has served terms in prisons and reformatories, who has no attachment to any place, and who is here because Los Angeles happens to fall in his itinerary. Among this class we have had recently a number of boys

with juvenile records, largely thefts of automobiles. We have had boys between the ages of 25 and 30 who have served upwards of five years in the penitentiary and jails, for crimes including automobile theft, bad checks, forgery, and extortion, and occasionally one who had been convicted of blackmail. Another class is the worn-out criminal, who has served many years in penitentiaries, and has no home. The most recent of such case was a man approximately 55 years old, who had served 30 years in the penitentiary for various offenses, including murder, and who had been in an institution for the criminal insane, and who was here soliciting money from house to house.

Recently there appeared in the Bar Association *Bulletin* reference to a case of a young musician who had come to Los Angeles, and had had hard sledding after he met the police. The writer of that article gave a very fair description of the case, but did not give a complete statement of the facts. To those who read the article, it is only fair that they should consider the balance of the facts. The young man in question stated that he had come here to establish himself as a music teacher; that he had previously earned a scholarship in the American Conservatory of Music, and his most recent employment was as cashier clerk with the Bernarr McFadden penny restaurants in New York, where he worked for about five years, but was discharged for habitual tardiness, in 1936. Thereafter, he secured some temporary employment, then crossed the United States by hitch hiking finally arriving in this city, and was found in one of our parks. In the course of an officer's work, this young man was interviewed, and was brought to the police station. The officer's report reads as follows:

> "This defendant has hitch hiked here from New York. He roams about the country from place to place with no certain destination. He has no money or visible means of support and no place to stay. We found the defendant loafing in the park."

The defendant was arraigned in Municipal Court, and charged with roaming from place to place without any lawful business, to which charge he entered a plea of guilty. The sentence was sixty days in the city jail, with thirty days suspended, and investigation referred to the Court Assistant for some ultimate disposition.

The commitment was on November 19, and on November 22 he was discharged, the only probation remaining being that he was not willingly to become a public charge. Under section 1203 of the Penal Code, he is entitled to reappear in Court at any time he can make a showing that there will be no violations on his part of any laws, and have this case dismissed.

The problem of vagrancy is a growing one in this community. We who serve in this Court do not entertain the belief that we have the solution, and we are always ready, willing, and eager to hear from any one who can make any contribution to the service that we render, and this whether some actual case is in progress or merely in the way of thought and conclusion.

LECTURES FOR LAWYERS A SUCCESS; COURSE TO BE CONTINUED

THE course of law lectures sponsored by the Los Angeles Bar Association has now reached its mid-term.

So far, in the specialized course, four lectures have been given by Paul Fussell, Esq., covering corporate procedure under State and Federal Acts, relating to issuance and public offering of securities, and two lectures by Paul Vallee, Esq., on wills. The remaining lectures to be given in this course are two lectures by Walter L. Nossaman, Esq. on trusts, four lectures on death and succession taxes, by David Tannenbaum, Esq., and four lectures on income taxes by Joseph D. Brady, Esq.

In the general course, lectures have been given by the Hon. Marshall F. McComb on appeals to the Supreme Court and District Courts of Appeal; by Allen W. Ashburn, Esq. on preparation for trial; by the Hon. Emmet H. Wilson on motions and *ex parte* applications; by Norman S. Sterry, Esq. on preparation of a personal injury case—plaintiff and defendant; by Maurice Saeta, Esq. on deferred payment contracts, and by Reuben G. Hunt, Esq. on bankruptcy and reorganizations under Section 77B of the Bankruptcy Act. The following lectures remain to be given:

Joseph D. Peeler, Esq. on taxation problems;
Hon. Leon R. Yankwich on Federal Courts—their jurisdiction and procedure;
Homer D. Crotty, Esq. on organization of corporations and issuance of securities;
On Municipal Court practice by a lecturer to be announced;
By Frederic H. Vercoe, Esq. on criminal trials;
Leon T. David, Esq. on municipal corporations;
Elmo H. Conley, Esq. on wills and trusts;
Court Commissioner Florence M. Bischoff on administration of estates; and
Herbert T. Morrow, Esq. on non-jury trials.

Attendance Gratifying.

The lectures in the specialized course are being attended by approximately 160 lawyers and the lectures in the general course by approximately 200.

The committee in charge of the lectures feels that the venture has been an unqualified success and also feels that lawyers who are not taking the courses are losing a splendid opportunity to brush up on recent decisions and particularly on recent statutory enactments. The lecturers have been unstinted in the time and effort that they have expended in the preparation of their talks, with the result that every lecture has been a thorough discussion of the subject involved, and all the lecturers deserve the unqualified praise and gratitude of the Bar Association for the generous way in which they have met the request of the committee.

Naturally, many subjects have not been touched upon in the courses so far announced, but the response from the lawyers, and the interest exhibited, is so great that the committee intends to continue with the courses after the summer vacation.

J. C. Macfarland, *Chairman.*

HAS THIS A MODERN APPLICATION?*

Following quotations from a decision (England) in 1568 concerning the great length of pleadings, in which the Chancellor observed:

> "that the said replication (*i. e.,* the pleading) doth amount to six score sheets of paper and yet all the matter thereof which is pertinent might have been well contrived in sixteen sheets of paper . . ."

and gave order

> "that the Warden of the Fleet shall take the said Richard Mylward (the culprit pleader) alias Alexander into his custody and shall bring him into Westminster Hall on Saturday next about 10 of the clock in the forenoon and then and there shall cut a hole in the midst of the same engrossed Replication which is delivered unto him for that purpose, and put the said Richard's head through the same hole, and so let the same Replication hang about his shoulders with the written side hanging outward, and then, the same so hanging, shall lead the said Richard bareheaded and barefaced round about Westminster Hall whilst the Courts are sitting, and shall show him at the Bar of every of the three Courts within the Hall, and then shall take him back again to the Fleet. and keep him prisoner until he shall have paid £10 to her Majesty for a fine and 20 nobles to the defendant for his costs in respect of the aforesaid abuse."

(*Hon Foster Cline, in Denver *Dicta.*)

PROTECTION OF JUDICIAL INDEPENDENCE

FOR some time past there has developed in this county a tendency on the part of interested persons, to influence the verdicts of juries and the decisions of courts in the outcome of pending trials. So obvious and insidious has this increasing practice become, through public speeches, radio broadcasts, and newspaper interviews, that the Los Angeles Bar Association has, after mature consideration, created a special committee of nine to investigate attempts to influence the determination, by any judge or jury, of matters pending before them and ot make recommendations as to proceedings to be taken by the Association to resist such attempts.

The resolution of the Board of Trustees creating the committee, and the names of those comprising the Committee follows:

WHEREAS, it is common knowledge that there is a growing tendency on the part of unscrupulous or unthinking persons to endeavor to influence the verdicts of juries and the judgments of judges in pending litigation through public addresses, radio broadcasts and newspaper articles and by more insidious methods; and

WHEREAS, unless such attempts are stopped are entire system for the administration of justice will be imperiled; and

WHEREAS, all lawyers are officers of the courts, and as such demand that every litigant shall have a fair trial before an unbiased jury or judge in the manner provided by law; and

WHEREAS, the membership of the Los Angeles Bar Association is representative of the entire community, and in vigorously resisting these attempts has no selfish interest to serve;

NOW, THEREFORE, BE IT RESOLVED that a standing committee of nine members to be appointed by the president of the Association, be, and the same is hereby created, to be known as the Committee for the Protection of Judicial Independence, whose duty it shall be to investigate from time to time any and all attempts which may be made by public addresses, radio broadcasts, newspaper articles, or otherwise, to influence the determination by any judge or jury of matters pending before such judge or jury, together with all attempts to belittle our courts or bring the same into disrepute, and to report from time to time to the Board of Trustees of this Association the results of its investigation, together with recommendations as to the proceedings which it feels the Los Angeles Bar Association should take to correct abuses which the committee has been investigating.

Pursuant to the above resolution, President Wright appointed the following:

Allen W. Ashburn, Chairman,
Herbert Freston,
Joseph Smith,
Isaac Pacht,
Marshall Stimson,
Alexander Macdonald,
Arnold Praeger,
Michael G. Luddy,
John J. Ford.

ISIDORE DOCKWEILER FELICITATED

ON the occasion of his seventieth birthday Trustee Isidore B. Dockweiler was felicitated by his fellow board members, and the following resolution was adopted:

WHEREAS, our fellow trustee, Isidore B. Dockweiler, has for a period of seventy years successfully avoided microbes, adverse weather conditions and irate clients; and

WHEREAS, by so doing he has definitely refuted the truth of the old saying that the good die young; and

WHEREAS, this Board of Trustees deems itself fortunate in having the sage advice of one who has acquired wisdom and tolerance with the passing years;

NOW, THEREFORE, BE IT RESOLVED; That this Board of Trustees extend to its fellow member, Isidore B. Dockweiler, its hearty congratulations on his reaching his seventieth anniversary, and express to him its hope that the future will hold for him many happy, active and useful years.

THE ATTRACTIVE NUISANCE DOCTRINE IN CALIFORNIA

By H. Landon Morris of the Los Angeles Bar

SINCE California first adopted the attractive nuisance doctrine, a considerable body of law upon the subject has been built up through the various decisions of the courts. This article will discuss, through these cases, most of the problems confronted in an attractive nuisance case.

The attractive nuisance doctrine, is an exception to the general rule that a person is not liable for an injury to a trespasser upon his premises.[1] Justification for this exception is based upon the rule that "sic utere tuo ut alienum non laedas,"[2] upon the rule that the owner of property cannot set a trap for trespassers and that the maintenance of an attractive contrivance is virtually a trap for a child,[3] and upon the theory that maintaining an attractive contrivance upon property, impliedly extends an invitation to children to come upon the premises.[4]

ELEMENTS OF ATTRACTIVE NUISANCE

The elements necessary to invoke the attractive nuisance doctrine are set forth in the California cases. In Faylor v. Great Eastern etc. Co.,[5] the court said,

> "Those who place an attractive but dangerous contrivance in a place frequented by children, and knowing, or having reason to believe, that children will be attracted to it and subjected to injury thereby, owe the duty of exercising ordinary care to prevent such injury to them, because such persons are charged with knowledge of the fact that children are likely to be attracted thereto and are usually unable to foresee, comprehend, and avoid the danger into which they are thus knowingly allured."

Not every contrivance is an attractive nuisance, the requirement being that,[6] "The contrivance must be artificial and uncommon, as well as dangerous."

This limitation is made because,[7]

> "As to common dangers existing in the order of nature, it is the duty of parents to guard and warn their children, and, failing to do so, they should not expect to hold others responsible for their own want of care."

Furthermore, even if the contrivance is artificial, uncommon and dangerous, it must be such a contrivance as is,[8]

> "capable of being rendered safe with ease without destroying its usefulness. . . ."

otherwise the doctrine will not apply.

The contrivance must be,[9]

> ". . . of such a nature as virtually to constitute a trap into which children would be led on account of their ignorance and inexperience."

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[1] *Peters v. Bowman*, 115 Cal. 345, 348.
[2] *Barrett v. Southern Pacfic*, 91 Cal. 296, 301, 302.
[3] *Faylor v. Great Eastern etc. Co.*, 45 Cal. App. 194, 201.
[4] *Faylor v. Great Eastern etc. Co., supra* page 200.
[5] *Faylor v. Great Eastern etc Co., supra*, page 199.
[6] *Morse v. Douglas*, 107 Cal. App. 196, 201; *Hernandez v. Santiago etc. Assn.*, 110 Cal. App. 229, 233.
[7] *Peters v. Bowman, supra*, page 356.
[8] *Morse v. Douglas, supra*, page 201.
[9] *Morse v. Douglas, supra*, page 201.

But this only means that the danger must be concealed or hidden, not readily obvious to a child,[10] or, an apparently harmless thing (to a child) which when touched,[11] or moved,[12] becomes dangerous, The "trap" spoken of has no reference to the spring gun or mantrap set out by a landowner against trespassers, for no landowner is permitted to set a trap, even for an adult trespasser.[13]

The attractive nuisance doctrine applies only where the child is a trespasser or a mere licensee.[14] This is because where a child comes upon premises by invitation, it is not the attraction of a contrivance that allures him. The child must be attracted by a childish curiosity and desire to play aroused by the contrivance.[15]

As quoted above[16] a duty to use ordinary care to prevent injury to children attracted by a contrivance is placed upon the owner. Apparently this duty is not met by placing danger signs and no admittance signs about the premises[17] nor by actually warning children to stay away.[18] Subject to the qualifications above set forth,[19]

> "it constitutes a want of ordinary care to knowingly maintain in such places, where attractive contrivances to the knowledge of the owner invite children to play, a dangerous piece of machinery, or other trap or snare for them, and that ordinary care in such cases may only be exercised by taking into consideration the propensities of children who play there, the ability of such children to appreciate the danger, and their power to avoid it, and so protecting them reasonably from the danger."

WHETHER ATTRACTIVE NUISANCE DOCTRINE APPLICABLE ORDINARILY QUESTION OF FACT

Ponds of water,[20] common objects and things[21] and playground apparatus[22] have been held as a matter of law to not be attractive nuisances. Also, where the child is more than a mere technical trespasser and is an active wrongdoer, the courts, as a matter of law, will not apply the doctrine.[23]

With these exceptions,[24]

> ". . . it is for the jury to determine whether the instrumentality is attractive to children. It is likewise a question of fact whether the

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[10] *Faylor v. Great Eastern etc. Co., supra.*

[11] *e. g.*, charged electric wire—*Tackett v. Henderson Bros.*, 12 Cal. App. 658.

[12] *e. g.*, turntable—*Barrett v. Southern Pacific, supra.*

[13] 19 Cal. Juris, 616, 617.

[14] *Giannini v. Campodocino*, 176 Cal. 548, 552.

[15] *Giannini v. Campodocino, supra*, page 552.

[16] *Faylor v. Great Eastern etc. Co., supra*, page 199.

[17] *Faylor v. Great Eastern etc. Co., supra*, page 195.

[18] *Faylor v. Great Eastern etc. Co., supra*, page 197.

[19] *Faylor v. Great Eastern etc. Co., supra*, page 200.

[20] *Peters v. Bowman, supra; Reardon v. Spring Valley Water Co.*, 68 Cal. App. 13; *Beeson v. City of Los Angeles*, 115 Cal. App. 122. However in *Sanchez v. East Contra Costa etc.*, 205 Cal. 515, where irrigation canal, filled with water, had a syphon in it, which the water concealed, court held it to be an attractive nuisance, on theory that while danger from the water was open and obvious, danger from the syphon hidden and concealed.

[21] *Whalen v. Streshley*, 205 Cal. 78; *Giannini v. Campodocino, supra; Allred v. Pioneer Truck Co.*, 179 Cal. 315; *Doyle v. Pacific Electric Ry.*, 6 Cal. (2nd) 550.

[22] *Solomon v. The Red River etc. Co.*, 56 Cal. App. 742 746, for the reason apparatus designed to attract children to play on it; that it must be left unsecured to be used.

[23] *Bradley v. Thompson*, 65 Cal. App. 226, 230, 231.

[24] *Clark v. P. G. & E. Co.*, 118 Cal. App. 344, 348, 349; see also, *Brown v. Southern Calif. Edison Co.*, 120 Cal. App. 102.

danger could have been easily guarded against. It is also a question of fact whether the method of construction was new or novel, and a question of fact whether the spikes placed upon the pole in question, from a few inches above the ground to the top thereof, constituted a virtual invitation to boys to climb thereon; and it is a question of fact also, as to whether the defendant ought to have reasonably anticipated the danger of making it readily accessible for boys to climb up the pole in question. . ."

CONTRIBUTORY NEGLIGENCE OF CHILD

The contributory negligence of a child is a defense to an attractive nuisance case,[25] but, as in any other action, it is almost universally a question of fact, not law.[26] California, of course, does not recognize the common law rule of non sui juris as to children.[27]

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[25] *Cahill v. Stone*, 153 Cal. 571, 576.

[26] *Cahill v. Stone, supra*, page 577; but see contra *Studer v. Southern Pacific*, 121 Cal. 400; *Wallace v. Great Western etc. Co.*, 204 Cal. 15; *Bolar v. Maxwell Hdwe. Co.*, 205 Cal. 396.

[27] *George v. Los Angeles Ry. Co.*, 126 Cal. 356, 362. But see *Parra v. Cleaver*, 110 Cal. App. 168 (where child 16 months old); *Gackstetter v. Market Street Ry.*, 130 Cal. App. 316 (where child between three and four years old.)

CONTRIBUTORY NEGLIGENCE OF PARENTS

Where parents sue in their own right for injuries to or death of their child, the doctrine of imputed negligence applies.[28] Under these circumstances parents are obliged to exercise ordinary care for the safety of their children.[29] In this connection, it has been held that where a parent knows of a danger and fails to warn his child against it, such failure will bar the parent's recovery.[30]

NEGLIGENCE OF DEFENDANT MUST BE PROXIMATE CAUSE OF INJURY

The rule of proximate cause is the same in attractive nuisance cases as in other tort actions.[31] But where the act of another child is the direct cause of the injury, such other child is held to be an irresponsible agent, and incapable of breaking the causal chain between the negligent act of maintaining the contrivance, and the injury.[32] Thus, where a turntable was harmless if let alone and the injury was the result of the child getting his leg caught in it as it was turned by a playmate, the negligence of the defendant in maintaining the turntable so that it could be turned, was the proximate cause of the injury.[33]

AGE OF CHILD AS AFFECTING APPLICATION OF THE DOCTRINE

Our courts have not placed a definite age limit beyond which as a matter of law, a child is presumed to be capable of measuring and guarding himself against dangers to which he may be exposed.[34] On the contrary, it has been held that,[35]

> "There is no precise age at which, as a matter of law, a child is to be held accountable for all his actions to the same extent as one of full age."

The doctrine has been held applicable to children whose ages range from four to thirteen years of age.[36]

CONTRIVANCES PASSED UPON BY THE COURTS

A variety of contrivances have been held by our courts to be attractive nuisances. It has been applied to turntables,[37] to a push car on rails,[38] to an unguarded wagon on the rear of a house being moved through the streets,[39] to a sagging charged electric wire.[40] to a sagging guy wire brought in contact with an electric wire,[41] to a push car, tunnel and mine stope,[42] to a train and cars moving slowly backwards,[43] to a syphon in an irrigation canal hidden below the water

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[28] *Seperman v. Storage Co.*, 97 Cal. App. 654, 656.
[29] *Seperman v. Storage Co., supra.*
[30] *Hernandez v. Santiago etc. Assn., supra*, page 236.
[31] *Katz v. Helbing*, 205 Cal. 629.
[32] *Katz v. Helbing, supra*, page 636.
[33] *Barrett v. Southern Pacific, supra*, page 303.
[34] But see *Studer v. Southern Pacific, supra*, where boy twelve years old held guilty of contributory negligence as a matter of law.
[35] *Cahill v. Stone, supra.*
[36] *Pierce v. U. G. & E. Co.*, 161 Cal. 176 (thirteen years of age) *Skinner v. Kneckrehm*, 10 Cal. App. 596 (four years of age).
[37] *Barrett v. Southern Pacific, supra; Callahan v. The Eel River etc. Co.*, 92 Cal. 89; *Weik v. Southern Pacific*, 21 Cal. App. 711.
[38] *Cahill v. Stone, supra.*
[39] *Skinner v. Knickrehm, supra.*
[40] *Rackett v. Henderson Bros., supra.*
[41] *Pierce v. U. G. & E. Co., supra.*
[42] *Faylor v. Great Eastern etc. Co., supra.*
[43] *Sandberg v. The McGilvray etc. Co.*, 66 Cal. App. 261.

line,[44] to caustic lime in a mixing box,[45] to an iron vat on wheels, filled with hot tar,[46] to a power line pole and charged wires,[47] and to dynamite caps on a railroad right of way.[48]

The courts have refused to hold as attractive nuisances ponds of water,[49] cellar in an abandoned house,[50] unbroken mule,[51] reservoir in cemetery,[52] stable,[53] playground apparatus,[54] truck, [55] trailer cars not in use,[56] and ladders.[57]

This does not mean that the courts will decline, in a proper case, to extend the doctrine to other contrivances than those enumerated. It was the early view of the courts that,[58]

> ". . . it (the attractive nuisance doctrine) should not be carried beyond the class of cases to which it has been applied."

This is no longer the position of the courts, which is, rather that,[59]

> ". . . in reply to the statement that no case has been found extending the doctrine to such a state of facts as this, it may be said in passing that, as has been shown, the rule has been applied to cases other than machinery, and, further, that while matching cases is an interesting mental recreation, it is not by matching cases, but by the correct application of sound legal principles, that a case such as this is best determined."

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[44] *Sanchez v. East Contra Costa etc., supra.*
[45] *Katz v. Helbing,* 215 Cal. 449.
[46] *Morse v. Douglas, supra.*
[47] *Clark v. P. G. & E. Co., supra; Brown v. Southern Calif. Edison Co., supra.*
[48] *Lambert v. Western Pacific R. R. Co.,* 135 Cal. App. 81.
[49] *Peters v. Bowman, supra; Beeson v. City of Los Angeles, supra; Melendez v. City of Los Angeles,* 8 Cal. (2nd) 741; *Reardon v. Spring Valley Water Co., supra.*
[50] *Loftus v. Dehail,* 133 Cal. 214.
[51] *Wahlen v. Streshley, supra.*
[52] *Polk v. Laurel Hill etc. Assn.,* 37 Cal. App. 624.
[53] *Giannini v. Campodocino, supra.*
[54] *Solomon v. Red River etc. Co., supra.*
[55] *Allred v. Pioneer Truck Co., supra.*
[56] *George v. Los Angeles Ry Co., supra.*
[57] *Doyle v. Pacific Electric Ry. Co., supra.*
[58] *Peters v. Bowman, supra.*
[59] *Faylor v. Great Eastern etc. Co., supra,* page 204.

JUDGE BOWRON'S REPORT TO JUDICIAL COUNCIL OF WORK OF SUPERIOR COURT

(The Bulletin regrets that limited space does not permit of printing the entire report of Judge Bowron for 1937 herein. The phases which seemed of greatest interest to the Bar are printed. Editorial perogative has been exercised in digesting the report which does not follow the text except in portions.

To the Honorable Chief Jutsice William H. Waste, Chairman, and Members of the Judicial Council of California:

I submit herewith report for 1937 of the Superior Court of Los Angeles County.

During the past year a number of improvements were effected in the disposition of civil litigation. The most important step taken was the adoption of the pre-trial calendar system which was devised and developed in Wayne County, Michigan, about the time similar reforms were being worked out in England. The experience of ten months' trial in this county has proved the value of the pre-trial and demonstrated that the plan is readily adaptable to California practice.

The past year witnessed the first period for approximately a decade during which the trial of cases in the Superior Court has been economically conducted, practically without outside help.

An improved method for selection of trial jurors, the result of study begun by members of the court two years ago, has been developed and has been in highly successful operation.

Other innovations during the past year are: Weekly conferences of members of the court; the beginning of a definite attempt to effect a greater uniformity in matters of procedure and practice in the various trial departments; the reorganization of law and motion and order to show cause departments of the court; creation of a divorce short cause calendar; preparation for general use of uniform or standard jury instructions; greater specialization in the trial of cases, and other minor changes.

Such improvements as have been effected in the matter of conducting the court's business have been made possible through the full cooperation and valuable assistance of all members of the bench of this county. The experience during the fifteen months I have served as Presiding Judge has made me realize more fully than ever before the high type of judges who make up the local bench and the pleasing lack of discord or dissention among the fifty judges of the court and more particularly the willingness of each to do a full share of judicial work.

In the following report I have not attempted to explain in detail the organization of the court or give full statistical information concerning it, but have, rather, set forth for your information a statement of accomplishments during the past year.

Civil Trial Calendar.

During the calendar year of 1937 the trial of cases has not kept pace with new filings. On January 1, 1937, there were 1985 civil cases untried, and the time elapsing between the date of filing memoranda of setting and date of trial was 3-1/3 months. On December 31, 1937, there were 3265 cases untried and

the time between filing of the memorandum and trial had increased to approximately 5 months. Following is a table showing the status of the calendar throughout the year:

	Time within which case would be tried.	
	Months.	No. of cases.
Jan. 1, 1937	3-1/3	1985
Feb. 1, 1937	1-1/5	1955
Mar. 1, 1937	3-1/5	1888
Apr. 1, 1937	3-1/5	1967
May 1, 1937	3-1/3	2063
June 1, 1937	4	2123
July 1, 1937	4	2233
Aug. 1, 1937	5	2409
Sept. 1, 1937	5½	2769
Oct. 1, 1937	5	2984
Nov. 1, 1937	5½	3212
Dec. 1, 1937	5½	3195
Dec. 31, 1937	5	3265

The months during which most of the judges took their vacations was when ground was lost. During 1937 an effort was made, for the first time in many

years, to handle the court's business without outside help, and I believe we would have been able to do so if the full quota of 50 judges had been available throughout the year.

There have been an unusual number of long trials during the year and a comparatively small number of short civil cases. Yet the average number of cases tried per judge has compared favorably with former years.

STATISTICS.

Following is an interesting table showing the filings, number of setting cards, cases tried, number of judges available for trial work, and the total number of civil departments, and also the average number of cases tried per judge.

Year	Filings: Civil Cases	Filings: Divorce Cases	Filings: Total	Setting Cards Filed	Cases Tried	Aver. No. L.A. Judges	Total Civ. Dpts. (Inc. outside Judges)	Aver. No. Cases per Judge per Month
1932	19873	9079	28952	*	6238	20.4	36.75	14.1
1933	17777	9766	27543	*	4543	23	29.3	12.96
1934	15872	11450	27322	7805	4644	21.6	28.8	13.17
1935	16329	12989	29318	7384	4621	21.98	29.65	12.98
1936	14712	13967	28679	8020	3809	22.04	25.61	12.48
1937	14550	14612	29162	6326	3445	22.34	23.83	12.58

It will be noted that during 1937 there have been on the average less than 24 judges, including judges from other counties, available for civil trial work, the smallest number in recent years.

Under the organization of the Los Angeles Superior Court seven departments are regularly designated for the trial of criminal cases. During the year 60 criminal cases were tried in civil trial departments.

ORGANIZATION.

The organization of the Superior Court provides for various special departments, as follows:

(1) Juvenile Court, requiring the entire time of one judge;

(2) Psychopathic Court, requiring a minimum of one-half day three days per week;

(3) Domestic Relations Department, wherein various matters other than the actual trial of divorce cases are heard and determined;

(4) Law and Motion Department;

(5) Civil Order to Show Cause Department;

(6) During the past year there has been established a third department for relief of the Law and Motion and Order to Show Cause Departments;

(7) Department of the Presiding Judge; and

(8) Appellate Department of the Superior Court. (This department, since its organization, has taken the undivided time of three judges of the court.

*Not available.

Appellate Department.

The three judges occupying the Appellate Department are removed from the Superior Court, so far as trials are concerned. It is regrettable that the able and experienced judges of the Appellate Department are not available for trial of cases, but the volume of business has not made this possible.

It has been suggested, in this connection, that the undivided time of two of the judges be given to the Appellate Department and that the third judge be called in only in the event the other two are unable to agree. The total number of cases handled by the Appellate Department has declined during the past few years, as shown by the following table:

	Filings.			Dispositions.		
	Civil	Crim.	Total	Civil	Crim.	Total
1932	580	136	716	561	146	707
1933	535	146	681	569	125	694
1934	520	155	675	533	150	683
1935	440	129	569	477	138	615
1936	321	75	435	381	86	467
1937	286	112	398	283	89	372

Outside Judges.

During the past year the practice of assigning two judges of the Municipal Court of Long Beach to the Superior Court for service in Long Beach departments has been continued. In this department Judge Walter J. Desmond acts as Presiding Judge, and two Long Beach Municipal Court judges sit in trial departments.

In Santa Monica the work has been increasing, but has not developed to a point where it requires the time of one of our regular judges. Therefore Judge Orlando H. Rhodes, Class A Justice of the Peace of Santa Monica, has been designated by the Judicial Council as a *pro tem.* judge of the Superior Court for the entire calendar year.

The work of the Pasadena department has continually increased. Judge Kenneth C. Newell, Judge of the Police Court of Pasadena, was designated to the Superior Court for the entire year. Presiding Judge Frank C. Collier transferred to Judge Newell such cases as he was unable to handle himself.

The branch at Pomona has not developed the amount of judicial business that was expected and has taken too much time of one of our judges in proportion to the number of legal matters handled.

Aside from assignments to the branch departments we have had little outside assistance during the past year other than for the trial of those cases in which it was felt the judges of Los Angeles County were disqualified. The total time served by those out-of-county judges called in where local judges were disqualified was 169 court days for the year.

Law and Motion and Order to Show Cause Departments.

One of the innovations effected during the past year was the reorganization of the Order to Show Cause, and Law and Motion Departments by the establishment of a three-judge court. The third judge has been assigned to take transfers as needed from either of the two special departments. The increase in the business of these two departments in recent years has necessitated numerous transfers to trial departments of those matters requiring more time than could be devoted to them by the judge sitting in either the Order to Show Cause or Law and Motion Department. Under the new arrangement such matters are transferred to the third judge for immediate hearing. This has permitted immediate disposition of injunction and show cause matters, and demurrers on important law questions are given more adequate consideration.

Following is a report showing the number and variety of matters handled in the Order to Show Cause Department.

Receiverships in force Jan. 1, 1937		96	
Receivers appointed since said date		79	
Total		175	
Receivers discharged	79		
Receiverships vacated	2	81	
Receiverships now pending			94
This department now has under its supervision:			
Insurance companies operated by a conservator		1	
Insurance companies in liquidation		21	
Building and loan associations in liquidation		18	
Banks in liquidation		23	
Oil syndicates and various corporations administered by trustees		6	69
Total actions pending supervised by this department			163
Miscellaneous orders have been made in the supervision of:			
Receiverships		339	
Trusteeships		5	
Insurance company liquidations		60	
Building and loan association liquidations		530	
Bank liquidations		303	1237

During the year 1937 there have been:

Applications for appointment of receiver:		
Granted	79	
Denied	8	87
Applications for injunction:		
Granted	175	
Denied	36	211
Petitions for writs of mandate, prohibition, and review:		
Granted	13	
Denied	13	26
Petitions for change of name:		
Granted	261	
Denied	1	262
Petitions under the moratorium acts:		
Granted	333	
Denied	46	
Dismissed	66	
Vacated	19	464
Land Registration (Torrens Title) petitions dismissed for want of prosecution		150

There have been other orders and judgments as follows:

Minors' contracts approved	115	
Minors' contracts disapproved	5	
Compromises and settlements of minors' claims approved	76	
Compromises and settlements of minors' claims disapproved	1	
Contempt citations ruled upon	55	
Judgments rendered in:		
Mortgage foreclosure actions	1034	
Actions to quiet title	720	
Street assessment and bond foreclosure cases	330	
Miscellaneous actions	556	
Miscellaneous orders made	1355	4247
Total orders and judgments		6684

Following are the statistics for Department 35, the regular Law and Motion Department:

Rulings on demurrers:		
Civil	2465	
Divorce	102	
Total		2567
Motions ruled on:		
Civil	2702	
Divorce	369	
Total		3071
Judgments signed:		
Civil	369	
Divorce	3	
Total		372

Annulment Actions.

Upon examination of filing statistics I was very much impressed with the great increase in the number of annulment actions filed. I was advised that some attorneys felt it was easier to secure an annulment of marriage than a divorce and many such actions were filed in the expectation of eliminating the year's delay before the client could remarry. I was further impressed with the lack of uniformity in the treatment of annulment actions, particularly with reference to Mexican marriages and marriages involving minors. As a result of such observation three judges, viz., Judges Joseph W. Vickers, Henry M. Willis and Charles D. Ballard, were designated to try all default annulment cases. These judges made a special study of the law relating to annulment of marriages, held conferences, and fixed a definite policy which has been followed throughout the year, with the result that there have been no embarrassing situations develop as a result of judges taking a different view of the law. The number of annulment actions filed has steadily decreased since this plan of assignment was put into effect July 22.

Following are the figures of domestic relations actions filed during the past seven years and a table showing filings by month during the year 1937:

	Filings, inc. Divorce, Annulment, etc.
1931	10,056
1932	9,079
1933	9,766
1934	11,500
1935	12,905
1936	14,141
1937	14,612

1937				
January	1066	121 a	909 d	36 misc.
February	1046	100 a	905 d	41 "
March	1208	130 a	1036 d	41 "
April	1306	144 a	1119 d	43 "
May	1224	110 a	1057 d	56 "
June	1336	132 a	1157 d	47 "
*July	1271	109 a	1109 d	53 "
August	1360	105 a	1201 d	54 "
September	1345	118 a	1177 d	50 "
October	1295	103 a	1148 d	44 "
November	1139	90 a	1006 d	42 "
December	1016	89 a	879 d	49 "

Domestic Relations Department.

During the past year it was my hope to effect a reorganization in the Domestic Relations Department. It is suggested that careful consideration be given to the creation of an office designated "Conciliator," before whom the parties may appear without counsel for discussion and possible adjustment before the breach between the spouses is further widened by an acrimonious order to show cause hearing relating to alimony, custody of children, and attorneys fees. The principal purpose of such an informal hearing would be to determine what

*July 22 effective date of three-judge annulment court.

the real cause of the separation is, to the end that many of the matters be amicably adjusted.

A further suggestion is the use or employment of "Friend of the Court," who would interest himself to prevent the perpetration of fraud upon the court in default divorce actions through the ferreting out acts suspected of constituting collusion, and who would lend assistance to prevent one of the parties being imposed upon in the divorce action.

Further reorganization of the Domestic Relations Department would suggest increased facilities for making investigations in order to properly determine what is for the best interests of minors, and setting up more adequate machinery for the enforcement of orders of the court for the support of minors as well as the enforced collection of alimony in particularly worthy cases.

Since the earthquake of March 10, 1933, which resulted in the condemnation of the old Court House, the court room problem in Los Angeles County has been a serious one. Only four civil departments regularly equipped as jury departments with jury boxes and jury rooms remain, these being located in the Hall of Records. To supply court room space temporary quarters were provided in a nearby office building by the Board of Supervisors.

The court rooms in the City Hall are not equipped with jury rooms and only a limited number with jury boxes which have been recently installed. It is necessary, however, to utilize a number of such departments for jury trials. The additional court rooms, so-called, located on the second floor of the office building at the corner of Temple and Broadway, are small, poorly ventilated,

and are so located that it has been at all times very difficult to properly conduct court trials by reason of street noises.

There have been provided only a sufficient number of court rooms, many improvised, to house 47 judges and when no judges are assigned to the District Court of Appeal and all are engaged in the trial of cases the problem is a difficult one. Another disadvantage of the present court room arrangement with courts in four different buildings is that the excellent Los Angeles County Law Library is not readily available for use of the judges. It being located in the Hall of Records is it handy to only four trial departments.

Repeatedly during the past year the Judges of the Superior Court have importuned the Board of Supervisors to provide more adequate court room facilities. Such efforts, however, have been unavailing. There has been considerable discussion relative to the necessity of the construction of a new Court House, but nothing tangible in this regard has developed.

Improved Jury Selection.

In 1935, then Presiding Judge Edward T. Bishop, appointed a committee of judges to make a study of methods of selecting prospective trial jurors and advise and direct the Jury Commissioner with respect to making up the trial jury lists. Theretofore the trial jury lists had been made up by the Jury Commissioner by taking names from the rosters of various organizations, names suggested by judges and others for jury service, and names of persons who presented themselves as prospective trial jurors. After a lapse of three years many of these names again went back into the jury wheel to be used over. The most frequent criticism of the personnel of trial juries was that the same were composed in too large percentage of housewives, who had no experience in business or ordinary affairs of life outside of the home, and elderly men whose minds had become inactive.

At no time in Los Angeles County has there been a charge or even a suspicion voiced that juries had been "stacked" or that the names on the list had been selected to meet the requirements of public utility or other corporations or any individual attorneys or clique of lawyers.

The plan set up under guidance of the committee, is as follows: The names of prospective jurors are taken from the list of registered voters of the county. This list at once answers a number of questions relating to the qualification of jurors, including that of residence, citizenship and age.

An estimate is made of the number of persons required. Roughly, about four times the number of names are taken from the Great Register as will be required for the jury list. This number, compared with the total registration in the county, provides the "key number." For the first jury list drawn under the new plan each twelfth name was taken from the list of registered voters in every fifth precinct in the county. The names and addresses are taken from the records in the office of the Registrar of Voters and to each a form letter is sent over the signatures of the Presiding Judge and the Jury Commissioner, requesting the addressee to appear before the Jury Commissioner.

Manifestly a list selected in this manner will contain the names of many persons unfit or undesirable to serve as jurors. When the citizen appears at the office of the Jury Commissioner, those who are manifestly unfit by reason of ill health, advanced age, poor use of the English language, or because of physical defects (such as poor hearing, poor eyesight, or inability to move from one court room to another) are immediately excused by an assistant. Such

assistant, without taking the time of the Jury Commissioner, also excuses a few others, such as mothers with young babies or persons having serious illness in their own family. The next problem is to determine whether the citizen has sufficient knowledge of the English language and adequate comprehension and mental capacity to understand proceedings in a court of law and comprehend the meaning of jury instructions. This is ascertained by a written test. The first test given is a vocabulary test. Twenty-five words ordinarily used during the trial of cases are set down in a column. After each word are placed three other words, one of which is a synonym. The prospective juror is asked to mark the word of similar meaning. In the second, the citizen is required to read several instructions ordinarily given in both criminal and civil cases and to mark certain statements appearing in connection therewith as "right" or "wrong."

In the preparation of the written test the committee had very valuable outside assistance of experts in the field of employment, a college professor, and the Chief Examiner of the Los Angeles County Civil Service Commission. After the written tests were prepared they were first submitted to a number of persons of average intelligence rating to discover the proper marking which would reveal the mental capacity of the persons submitting to the tests. The questions are so prepared that the percentage of correct answers can be determined by a clerk in a few seconds. The result of both the written test and the interview is taken into consideration by the Jury Commissioner in determining whether or not the person is qualified to serve at a juror.

In this manner the trial jury lists for the year 1937 have been made up. Thus persons in all walks of life, many of whom would never have been contacted for possible jury duty under the old system, are added to the jury list. It has been found that the plan yields more jurors in the prime of life; it eliminates the juror who is himself seeking jury service for the experience or other ulterior purpose; it is a complete answer to any possible charge of jury hand-picking, and the list when selected represents a fairly good cross-section of the citizens of the county.

As chairman of the judges' Committee on Jury Selection, I desire to acknowledge the valuable services of Judge Henry M. Willis and Judge Thomas L. Ambrose. Before his elevation to the Supreme Court, Judge Douglas L. Edmonds was an equally valuable member of this committee.

Methods of Impaneling Juries.

At the beginning of the year the single jury panel plan that has been in operation for the past several years was continued. Under this arrangement all jurors that are expected to serve in any department of the Superior Court are impaneled by one judge. After impanelment all jurors for a time were required to report daily to a clerk in a central assembly room and thereafter sent to the various jury trial departments, either civil or criminal, as needed. This system is undoubtedly the most economical that has yet been tried, but after careful study and consideration it was felt that greater effciency could be realized by splitting the panel so that jurors would serve all of their time in either criminal or civil departments. Under the provisions of the statute, jurors in the larger counties of the state may serve only twenty days in the actual trial of cases. Jurors should be confused as little as possible in the performance of their duties. Requiring jurors to serve in civil and criminal cases indiscriminately, it was found, did not produce the best results.

It was therefore determined, during the early part of the year 1937, to adopt a new method of assignment of jurors by splitting the panel. Under the present practice a sufficient number of names is drawn out of the jury wheel to meet the requirements of both criminal and civil departments. These jurors are given preliminary instructions by one of the criminal judges (during the past year, Judge Charles W. Fricke) relative to the functions and duties of jurors in the trial of criminal cases. Those jurors who are to serve in civil departments are given similar general instructions by the impaneling judge (during the past year, Judge Ruben S. Schmidt).

Selection of Civil Juries.

To avoid such suspicion and to make it apparent to every litigant that he is being fairly treated in the matter of selection of jury personnel the following practice was put into operation during the past year: A small jury wheel was purchased and placed in a prominent place in the Master Calendar Department of the Presiding Judge. Into this jury wheel are placed the slips containing the names of all civil trial jurors not actually engaged in the trial of cases. As new cases are assigned to trial departments at 9:30 o'clock each morning the bailiff of the department in open court spins the wheel, unlocks it, and draws therefrom a sufficient number of prospective jurors for each department. Unless the case is of unusual importance, 18 slips are withdrawn. The slips then are placed in an envelope and sealed in open court and dispatched to the clerk in the trial department. A notation of the names is made by the clerk who then repairs to the jury assembly room and instructs the jurors by name to go to the designated department. Thus, through the method of making up the jury list and the selection of names for the trial of particular cases in open court, attorneys and litigants are impressed that the court is treating every one with equal fairness.

Jury Expense.

During past years considerable unwarranted expense fell upon the taxpayers by reason of the practice of some attorneys, particularly in personal injury actions, of demanding a jury and thereafter waiving trial by jury. Under this practice, many attorneys who were uncertain whether they desired to try their case before a jury or a judge sitting without a jury, would demand a jury and deposit a fee of $24.00. The cause would go on the calendar as a jury case and a sufficient number of jurors would in due course be provided and held in attendance for the trial of all jury cases. On the date of trial it might develop that the case had been settled or at the last minute the attorney demanding a jury would decide to waive a jury, possibly after he learned of the department to which the case was assigned. This practice shifted much of the burden of payment of jurors from litigants in civil cases, where it properly belongs, to the taxpayers of the county. To meet this situation Rule 25 of the Rules of the Superior Court was amended, by the terms of which the return of the jury deposit is refused unless formal notification to the court of waiver of jury is made three days, exclusive of Sundays and holidays, prior to the date of trial. During the past year it has been necessary to enforce this rule strictly and rigorously to stop the practice on the part of attorneys above referred to. The rule has been construed by the court during the past year as covering cases where settlements have been effected and the cause goes off calendar on the date of trial without three-day notice to the court. Such action on the part of the Presiding Judge proved unpopular with many trial attorneys, but it was effective nevertheless. During the year 1936 a total of $504.00

deposited as jury fees was retained by order of court and transferred to the General Fund of the county; during the year 1937, by action of the Presiding Judge, a total of *$5,256.00* deposited as jury fees was retained by order of court and transferred to the county General Fund.

During the year the Department of the Presiding Judge has cooperated with the County Auditor in devising ways and means to reduce jury expense. More careful checks have been made for the purpose of greater accuracy in the estimates of jury requirements so that by the end of the past year the handling of jurors had been placed on a much more efficient and economical basis.

Weekly Conferences.

A further effort during the past year to bring about more uniformity in practice and procedure and to permit frequent discussions of the ordinary trial problems of the court took the form of weekly conference luncheons of the judges. At such luncheons the judges "talk shop" and discuss questions that daily arise in the various trial departments. These conferences have proven very instructive and beneficial to the judges and will be continued in the future.

(Owing to lack of space in this number of the Bar Bulletin, Judge Bowron's discussion of "The Pre-trial Calendar" will be printed in the April number.)

UNAUTHORIZED PRACTICE NEWS BRIEFS

Ohio: On December 30, 1937, the Second District Court of Appeals of Ohio, in the case of "In the Matter of the Unauthorized Practice of Law in Franklin County, Ohio, Ivan H. Gore, Appellant, No. 2735" in a unanimous decision affirmed the trial court in its issuance of an injunction, restraining Gore, a real estate broker, from engaging in the unauthorized practice of the law. The Court found that a real estate broker could not prepare instruments in deals which he negotiated.

Missouri: Several months ago, a number of the leading Casualty and Liability Insurance Companies, operating in Missouri, filed their petition in the Circuit Court of Boone County, against the General Chairman of the Bar Committees of that State, seeking a declaratory judgment, declaring the law as to certain acts of the Insurance Companies, acting through their lay adjustors.

The Bar Committee filed an answer and cross bill seeking to enjoin the plaintiffs and their agents from certain acts admitted in the Insurance Company's petition.

On January 14, 1938, an opinion was handed down by the court sustaining the cross bill of the Bar Committee, and enjoining the Insurance Companies, through their lay adjustors, from engaging in the unauthorized practice of the law.

Nebraska: In the case of State ex rel Hunter v. Kirk, (276 N. W. 380) the Supreme Court of Nebraska found one Kirk guilty of contempt of court for having practiced before a Justice of the Peace without first having been duly admitted to practice law in Nebraska.

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